

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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JAMES E. FLAHERTY,

Plaintiff,

- against -

SOUTHAMPTON TOWN POLICE
DEPARTMENT, et al.,

Defendants.
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**SUPPLEMENTAL
REPORT AND
RECOMMENDATION**

CV 02-5516 (DRH) (JO)

JAMES ORENSTEIN, Magistrate Judge:

On March 3, 2005, I issued an Order for Written Status Report in the above-captioned case, noting the lack of activity since April 18, 2003, and directing *pro se* plaintiff James E. Flaherty ("Flaherty") to provide a written status report about the case within ten days. Docket Entry ("DE") 6. The order warned Flaherty that failure to submit a timely response would result in a Report and Recommendation that the case be dismissed for failure to prosecute. *Id.* On April 4, 2005, not yet having received the required status report, I issued a Report and Recommendation urging that the case be dismissed for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). In particular, I noted the lack of activity in this case since April 18, 2003, as well as Flaherty's failure to effect service of either the complaint or amended complaint or to take any further steps to prosecute this case. DE 7.

On April 5, 2005, the day after issuing my Report and Recommendation, I received a letter from Flaherty dated March 28, 2005, in which he responded to my order of March 3, 2005. In his letter, Flaherty recounts various events that he asserts have hampered his ability to prosecute his claim thus far and apparently seeks, among other things, an enlargement of time to continue the litigation. In particular, Flaherty states that he was injured in two separate incidents

in which he was struck by motor vehicles, and that he also suffered the loss of computer files by virtue of damage to his computer that he cannot afford to repair. Flaherty also notes that the Honorable Arthur D. Spatt, United States District Judge, previously prevented him from filing any papers in connection with any other cases pending in this district unless certain conditions were met. DE 8; *see also Flaherty v. Hackeling*, CV 03-3981 (ADS), DE 79 (Order dated Dec. 9, 2003).¹

Even accepting all of his assertions as true, and disregarding the untimeliness of his submission, Flaherty's response does not explain or excuse his failure to effect service of the amended complaint under Rule 4(m) of the Federal Rules of Civil Procedure. Flaherty filed his complaint on October 15, 2002, DE 1, and amended it shortly thereafter, on November 7, 2002. DE 4. As a result, he had until March 7, 2002 to serve the amended complaint upon the named defendants. Fed. R. Civ. P. 4(m). He did not comply with that deadline, which passed well over a year before the first of the incidents Flaherty cites to explain the delays in this case. Flaherty's submission therefore provides no reason for me to reconsider or withdraw my earlier recommendation that this case be dismissed for failure to prosecute.

This Supplemental Report and Recommendation will be filed via the court's Electronic Case Filing system, and a copy will be mailed to Flaherty. Any objections to this Supplemental Report and Recommendation must be filed with the Clerk of the Court within ten days. Failure to file objections within this period waives the right to appeal the District Court's Order. *See* 28

¹ Flaherty states that Judge Spatt entered a similar order in *Flaherty v. Costello Marine Contracting Corp.*, CV 03-5527 (ADS), but I have not found such an order among the docket entries in that case.

U.S.C. § 636 (b)(1); Fed. R. Civ. P. 72; *Beverly v. Walker*, 118 F.3d 900, (2d Cir. 1997); *Savoie v. Merchants Bank*, 84 F.3d 52, 60 (2d Cir. 1996).

SO ORDERED.

Dated: Central Islip, New York
April 11, 2005

/s/ James Orenstein
JAMES ORENSTEIN
U.S. Magistrate Judge